



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
----- ) ISCR Case No. 20-02069  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

08/12/2021

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his national security eligibility. He presented sufficient evidence to explain and mitigate his history of financial problems or difficulties. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on September 17, 2019. (Exhibit 4) The automated version of the SF 86 is the e-QIP. The SF 86 is commonly known as a security clearance application. He provided additional information when interviewed during a November 2019 background investigation. (Exhibit 10) Thereafter, on December 15, 2020, after reviewing the available information, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.

The SOR is similar in form and function to a complaint, which is the initial pleading that starts a civil action; in some states this pleading is known as a petition; and in criminal law it is a formal charge accusing a person of an offense. The SOR detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on April 1, 2021. He admitted the factual allegations in the SOR; he provided a two-page memorandum in explanation; and he provided extensive supporting documentation. Altogether, his answer consists of 34 pages. He requested a decision based on the written record in lieu of a hearing before an administrative judge.

On April 30, 2021, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits herein. The FORM was mailed to Applicant who received it on June 11, 2021. His timely reply to the FORM was received on June 14, 2021, and those matters are admitted without objection as Exhibits A – M. The case was assigned to me on August 3, 2021.

### **Findings of Fact**

Applicant is a 47-year-old employee who is seeking a security clearance for his job with a federal contractor. He works as an account manager for a company doing business in the defense industry. He has held a security clearance in the past while working in the defense industry and during military service. (Exhibit 10 at 12-13) He has been married and divorced twice. He has two adult children from his first marriage. His formal education includes a bachelor's degree awarded in 2004.

Applicant's employment history includes honorable military service on active duty with the U.S. Air Force during 1995-1999. He has been continuously employed since at least 2005. He worked as a systems engineer during 2005-2012. He next worked as an account manager during 2012-2019. He began his current job as an account manager in January 2019.

The SOR alleges a history of financial problems or difficulties consisting of a Chapter 13 bankruptcy case, filed in 2007 and discharged in 2012, as well as seven collection or charged-off accounts in amounts ranging from \$3,061 to \$11,308 for a total of approximately \$41,000. He disclosed his history of financial problems and provided an explanation thereof in his 2019 security clearance application. (Exhibit 4 at Section 26) He admitted the SOR allegations in his answer to the SOR. In addition to his admissions, the Chapter 13 bankruptcy case is established by bankruptcy court records (Exhibit 5), and the seven delinquent accounts in the SOR are established by credit reports from 2019-2021. (Exhibits 6, 7, 8, and 9)

Applicant attributed the Chapter 13 bankruptcy case to the fallout from his first divorce in 2006. Married in 1993, Applicant and his spouse had two children, a son and a daughter. The divorce was final in October 2006, although the petition for divorce was

filed in December 2005. Applicant explained that his spouse ran up several credit card accounts before she filed for divorce. The divorce was protracted. As a result of the divorce, Applicant was required to repay marital debt as well as pay both child support and alimony. Given his income at the time, he was unable to meet his financial responsibilities, and so he sought relief in bankruptcy court.

A Chapter 13 bankruptcy case is also called a wage earner's plan, because it enables individuals with regular income to develop a plan to repay all or part of their debts in monthly installments to creditors over three to five years. The bankruptcy case records in Applicant's case show he filed a Chapter 13 petition in April 2007 (less than a year after the divorce); the bankruptcy court approved the repayment plan in March 2008; Applicant completed the repayment plan in April 2012; and the bankruptcy court granted Applicant a discharge in May 2012. (Exhibit 5)

Applicant attributed the seven delinquent debts to substantial costs he incurred during a legal dispute with his first spouse during 2017-2019. Applicant sought to modify the child-support order since his oldest son was no longer a minor, and he sought custody of his minor daughter as she wanted to live with him. His spouse contested both requests. The case took nearly two years until it was concluded in March 2019, when his daughter was two months shy of age 18. The following month in April 2019 he retained the services of a firm to assist him in dealing with his delinquent debts.

Applicant described the firm as a debt-settlement company, but that is not the firm's business model. The supporting documentation with Applicant's answer to the SOR includes the paperwork from this firm, which describes the business as assisting customers in the preparation of documents that may assist in removing inaccurate items from credit reports. The agreement signed by Applicant indicates the company will provide services (1) to assist in determining if third-party debt collectors are lawfully attempting to collect debts and (2) to assist in the removal of inaccurate items from credit reports. The consumer-services section of the agreement does not mention the terms debt settlement or debt consolidation.

By entering into the agreement, Applicant agreed to pay an initial fee of \$766 and then pay a fee of \$765.99 for 17 monthly payments, in exchange for the services provided. Furthermore, in the client-acknowledgments section of the agreement, it is made clear that the company is not in the debt-settlement or debt-consolidation business. Applicant acknowledged, among other things, the following: (1) he could perform any of the services explained in the agreement without entering into the agreement; (2) the company does not settle or reduce his debt but rather assists in determining if creditors are reporting accurate information to credit reporting agencies; (3) the company is not a debt-consolidation or debt-settlement company; and (4) the company does not pay off his alleged creditors with the funds he pays, rather those funds go directly to pay the company for their services it provides to him. I find that Applicant did not enter into a debt-settlement plan with the company but rather hired the company to provide services in the nature of credit repair. Without an opportunity to question Applicant, I cannot determine if he fully understood the agreement.

In his reply to the FORM, Applicant provided reliable documentary evidence showing that he settled the seven collection and charged-off accounts in the SOR. First, he settled a \$3,061 medical collection account with a third-party collector (who requested the account be deleted) in May 2021. (Exhibit B) Second, he settled a \$5,363 charged-off account for the lesser amount of \$1,984 in May 2021. (Exhibit C and Exhibit I at 3) Third, he settled an \$8,271 charged-off account for the lesser amount of \$3,300 in May 2021. (Exhibit D) Fourth, he settled a \$3,563 charged-off account for the lesser amount of \$1,318 in June 2021. (Exhibit E) Fifth, he settled a \$5,847 charged-off account for the lesser amount of \$2,338 in May 2021. (Exhibit F) Sixth, he settled an \$11,308 charged-off account (that was pending a lawsuit) for the lesser amount of \$6,900 in January 2021. (Exhibit G) And seventh, he settled a \$4,413 collection account for the lesser amount of \$1,544 in May 2021. (Exhibit H)

Applicant was able to settle the seven delinquent accounts (contrary to the advice he was receiving from the credit-repair firm) due to a substantial increase in his wages from his current employment as compared with his previous employment. His wages in 2020 were more than \$400,000, and he had more than \$100,000 in a savings account as of February 2021. (Answer at 4, 6)

### **Law and Policies**

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.<sup>1</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>2</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>3</sup> The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>4</sup>

---

<sup>1</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>2</sup> 484 U.S. at 531.

<sup>3</sup> 484 U.S. at 531.

<sup>4</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>5</sup> Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>6</sup>

## Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is set forth in AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply.

Applicant has sufficiently explained and mitigated his history of financial problems. His financial problems were related to circumstances largely beyond his control; namely, his first divorce in 2006 and the child-custody and child-support disputes in 2017-2019. He acted responsibly under the circumstances by taking action to recover from each. As a result of the financial stress created by the divorce, he

---

<sup>5</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>6</sup> Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15

sought relief via a Chapter 13 bankruptcy case. He entered into a court-approved repayment plan, which he completed in 2012. As a result of the financial stress created by the legal disputes in 2017-2019, he sought professional assistance from what he apparently believed was a debt-settlement firm. He wisely abandoned that firm's recommended course of action when he received the FORM and took action to settle the delinquent accounts. His settlement of the seven delinquent accounts qualifies as a good-faith effort to repay his creditors. Unlike many financial cases I see, he did an excellent job documenting his remedial actions. Moreover, given his recent, substantial increase in income and that both his children are no longer minors, it is unlikely that similar financial problems will recur. Accordingly, the mitigating conditions at AG ¶¶ 20(a), 20(b), and 20(d) apply in Applicant's favor.

Following *Egan* and the clearly consistent standard, I have no doubts and concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a -- h: For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. National security eligibility granted.

Michael H. Leonard  
Administrative Judge